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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 246/2017 & I.As. 6605-6607/2017

MRS. INDIRA SRIDHARAN

..... Plaintiff

Through: Mr. Ashish Dholakia, Advocate with
Mr. Gautam Bajaj, Advocate.

versus

TAMILNAD MERCANTILE BANK LTD & ORS Defendants

Through: Mr. Pramod Kumar, advocate for
defendant No.1.

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Date of Decision: 31st May, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for declaration, permanent and mandatory injunction and other consequential reliefs pertaining to suit property bearing No. C-11, Gulmohar Park, New Delhi-110049.
2. It is stated in the plaint that the plaintiff is the sole leasehold owner of the property bearing No. C-11, Gulmohar Park, New Delhi-110049 and has been residing in the said suit property along with her husband i.e. defendant No.6 for over forty years.
3. It is further stated that initially the plaintiff and her husband were residing in the suit property along with her uncle Mr. V.A Menon until his death in 1989.

4. It is also stated in the plaint that the defendant No.2 is the brother and defendant No.3 is the sister of the plaintiff. Defendants No.4 and 5 are the niece and nephew of the plaintiff respectively.

5. It is the case of the plaintiff that the suit property was allotted to the late uncle of the plaintiff Mr. V.A Menon vide perpetual lease deed dated 19th February, 1970 who lived in the suit property till his death on 09th November, 1989. On 24th April, 1985, the plaintiff's uncle executed a Will which provided an exclusive option to the plaintiff and her husband i.e. defendant No.6 to gain sole ownership and possession of the suit property within six years from the death of plaintiff's uncle upon payment of Rs.3 lacs each to defendants No.2 and 3 and Rs.1.5 lacs each to defendants No.4 and 5.

6. It is stated in the plaint that plaintiff and her husband complied with the conditions of the Will dated 24th April, 1985 and paid the aforementioned amounts to all the other legatees i.e. defendants No. 2 to 5 against letters of acknowledgment to gain sole ownership of the suit property. It has been further averred that requisite certificates of No-objection were issued by the defendants No.2 to 5 in this regard. It is also stated that the husband of the plaintiff vide Relinquishment Deed dated 27th April, 2002 relinquished his right, title and interest in the suit property in favour of the plaintiff and consequently, the plaintiff became the sole and absolute owner of the suit property.

7. Learned counsel for the plaintiff states that despite being aware of the fact that the plaintiff is the sole and absolute owner of the suit property, defendant No.2 through his company M/s. Consolidated Marine Services Ltd. fraudulently obtained a loan from the defendant No.1-Bank and handed

over the original title documents which were in his possession as a result of the goodwill and trust placed in him by the plaintiff. He states that defendant No.1-Bank has acted with abject disregard of the due process to be followed in granting a loan against the suit property. In support of his submission, learned counsel for plaintiff relies upon the judgment of the Supreme Court in ***R.K. Mohammed Ubaidullah & Ors. Vs. Hajee C. Abdul Wahab (D) By LRs. & Ors., (2000) 6 SCC 402*** wherein it has been held as under:-

“15. Notice is defined in Section 3 of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive. “A person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation II of said Section 3 reads:

“Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.”

Section 3 was amended by the Amendment Act of 1929 in relation to the definition of “notice”. The definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. For the immediate purpose Explanation II is relevant. It states that actual possession is notice of the title of the person in possession. Prior to the amendment there had been some uncertainty because of divergent views expressed by various High Courts in relation to the actual possession as notice of title. A person may enter the property in one capacity and having a kind of interest. But subsequently while continuing in possession of the property his capacity or interest may change. A person entering the property as tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may

be some other interest is created in his favour subsequently. Hence with reference to subsequent purchaser it is essential that he should make an inquiry as to the title or interest of the person in actual possession as on the date when the sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property. In the case on hand Defendants 2 to 4 contended that they were already aware of the nature of possession of the plaintiff over the suit property as a tenant and as such there was no need to make any inquiry. At one stage they also contended that they purchased the property after contacting the plaintiff, of course, which contention was negated by the learned trial court as well as the High Court. Even otherwise the said contention is self-contradictory. In view of Section 19(b) of the Specific Relief Act and definition of "notice" given in Section 3 of the Transfer of Property Act read along with Explanation II, it is rightly held by the trial court as well as by the High Court that Defendants 2 to 5 were not bona fide purchasers in good faith for value without notice of the original contract."

8. Learned counsel for plaintiff further states that the Debt Recovery Tribunal has erroneously dismissed the objections filed by the plaintiff in TRC No.154/2014 instituted by the defendant No.1-Bank for recovery of the outstanding amounts owed by defendant No. 2.
9. On the other hand, learned counsel for defendant No.1-Bank states that the present suit is not maintainable as the plaintiff has an alternative effective remedy by way of an appeal under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

10. In rejoinder, learned counsel for plaintiff states that the present suit is maintainable as the plaintiff is seeking a declaration that she is the owner of the property in dispute. In support of his submission, he relies upon Rule 11(6) of the Second Schedule of the Income Tax Act, 1961, which reads as under:-

“11(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.”

11. Undoubtedly, a third party to a recovery proceeding filed by the Bank, who asserts that it is the sole and exclusive lease holder and title holder of the entire suit property is entitled to maintain a civil suit.

12. However, a perusal of the paper book in the present instance reveals that the plaintiff had initially filed a civil suit being CS(OS) 2665/1995 praying for an identical declaration on similar facts i.e. it had 1/5th share in the suit property in accordance with the Will of the late uncle dated 24th April, 1985 and further in accordance the said Will, the plaintiff had paid the amounts stipulated to all other legatees to gain sole ownership of the suit property.

13. Admittedly, the said suit being CS(OS) 2665/1995 was unconditionally withdrawn by the plaintiff. In view of the unconditional withdrawal, this Court is of the view that the plaintiff cannot seek the identical relief today in the present suit proceedings as both CS(OS) 2665/1995 and the present suit with regard to the said relief are based on identical causes of action.

14. The Supreme Court in *K.S. Bhoopathy & Ors. Vs. Kokila & Ors., (2000) 5 SCC 458* has held that a plaintiff can abandon a suit or abandon a part of his claim as a matter of right without the permission of the court; in that case he will be precluded from suing again on the same cause of action.

15. The Supreme Court in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior & Ors., AIR 1987 SC 88* even went to the extent of holding that withdrawal of a writ petition under Article 226 without permission to institute a fresh petition would operate as a bar to maintainability of the second writ petition.

16. Since the relief of declaration with regard to the ownership cannot be entertained, this Court is of the view that for the other reliefs including the relief of declaration that the decree/judgment dated 15th April, 2002 passed by the Debt Recovery Tribunal is invalid, has to be agitated before an appropriate forum stipulated under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

17. Consequently, with regard to the other reliefs, the present suit and pending applications are disposed of with liberty to the plaintiff to agitate her grievance in an appropriate forum in accordance with law. It is clarified that in the event, such proceeding is filed within a period of six weeks, the same shall not be dismissed on the ground that it is barred by limitation.

MANMOHAN, J

MAY 31, 2017

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